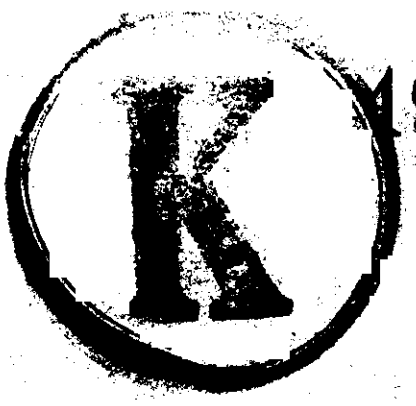

1946

File No. O. Smoke Nuisances/46

A **BRANCH**

Subject:— Opinions under the Bombay Smoke Nuisances Act 1912.

CP 4/E

File No. O. Smoke Nuisances/46.

Gen. 194 e.

340.84

C O N T E N T S

Legal Department File No. O. Smoke Nuisances/46

Sr. No.	R.I/ O. No.	Subject	Pages.
		Opinions under the Bombay Smoke Nuisances Act, 1912.	
1.	3729 17-5-46	Sec. 9(1) Rules 23(1) , 23(5) and 26 of the rules m ake under the Act. Question whether the concession mentioned in rule 23(1) applies to Chimneys under 100 ft. in height accepted under item (5) xxfxxx of the proviso to rule 26.	-12- 1-2
2.	6899 11-10-46	Question whether the commission once constituted under Sec. 4(1) of the Act, can be expanded before the expiry of its term of office	3-4
3.	8419 25-11-46	------ do.------ Question whether , if found necessary can bhe commission be reconstituted	5-6

Mjr/10/7
5 Cs.

NCA 21/7

AHM 21/7

Office of the R.L.A.

Section 9(1) of the Bombay Smoke.nuisances Act, 1912 Makes the owner of a furnace liable to a fine of smoke is emitted from the furnace-

(a) in greater density, or

(b) at a lower altitude, or

(c) for a longer time

than is permitted by rules made under the Act. These are three separate and independent offences under the section.

2. Rule 23(1) of the Rules made under the Bombay Smoke- nuisances Act lays down that smoke of the scales of density Nos. 1,2 and 3 as determined in accordance with rule 21 may be emitted from a furnance for any time. Rule 26 provides that smoke shall not be emitted from a furnace at a lower altitude than 100 feet from the fring-floor level; but under clause (5) of the proviso to the rule, the prescribed limit of altitude has no application in the case of furnaces exempted by the Commission.

3. It appears that in the present case the New Standard Engineering Co. Ltd. was granted a provisional exemption under rule 26(5) subject to the condition that no smoke nuisance is caused and the Commission reserved to itself the right to require the Company to raise its chimney to the full height of 100 feet if found necessary. In December 1945 after investigation of a complaint of smoke nuisance received from a neighbouring resident, the Company was asked to raise the height of the chimney from 75 feet to 100 feet. The Company has refused to comply with the request on the ground that the present height of 75 feet is within the permissible limits of the scales specified in rule 23(1). This contention of the Company has no justification in law. If the exemption granted to the Company is now withdrawn by the Commission, any emission of smoke thereafter from theCompany's chimney

P.T.O.

of 75 feet would attract the penalty provided for in section 9 of the Act notwithstanding the fact that the smoke so emitted is within the scales of density prescribed under rule 23(1).

Sd/- P.N.Moos

O.C. 17/5/46

Remembrancer of Legal Affairs.

U.R. to P & S.D. No 3729 , dated the 17th May 1946.

Mjr/10/7

4 Cs.

L.D.R.I. No. 7928 dated

13-9-1946

Submitted

2. The Commr. of Labour states that the present commission was constituted under section 4(1) of the Bombay Smoke Nuisances Act, 1912 on 1st January 1946 for a period of two years with 6 members, excluding the President, of whom 3 are Government nominees, 2 are elected by the Mill Owners Association and one by the Chamber of Commerce. He has however not forwarded a copy of the notification constituting the commission. The Commissioner in the special meeting held to consider the measures to be taken consequent upon the application of the provisions of the Bombay Smoke Nuisances Act, 1912 to the area now covered by the Greater Bombay Laws and the High Court (Declaration of Limits) Act, 1945, resolved that the number of members of the commission be increased from 6 to 8. The term of office of the Commission expires on 31-12-1947. The question raised for the consideration the R.L.A. is whether the commission once constituted under section 4(1) of the Bombay Smoke Nuisances Act, 1912 can be expanded be fore the expiry of its term of office.

I agree.

In the absence of any provision in the Bombay Smoke.Nuisances Act, 1912, it would not be competent for Govt. to expand the Bombay Smoke.Nuisance Commission, constituted on 1-1-1946, before the exipry of its term of office.

Sd/- R.T.K.
8/10/

Sd/- P.N. Moos
9/10
Remembrancer of Legal Affairs.

U.R. to P. & S.D. No. 6899 dated 11-10-46

Mjr/10/7

4 Cs..

L.D.R. I. No. 9587/31-10-46
1-11-46

Submitted

2. Please see R.L.A's opinion No. 6899, dated the 11th October 1946 and the office notes underlying the same. In this opinion it was held that in the absence of any provision in the Bom. Smoke Nuisances Act, 1912, it would not be competent for Govt. to expand the Bom. Smoke Nuisance Commission constituted on 1st January 1946 before the expiry of its term of office. H.M. (Labour) enquiries whether, if found necessary, the Commission can be. reconstituted or not . (p 4 ante). P. & S.D. states that the R.L.A's opinion referred to above applies to reconstitution of the Commission as well as to its expansion before the expiry of its term of office. The R.L.A. is requested to advise in the matter.

I agree.

When once Govt. has constituted the Bom Smoke.Nuisances Commission it in accordance with the provisions of Sub Sects (2)(3) of Sec t 4 of the Bom. Smoke.nuisances Act, 1912, it cannot be reconstituted until after the expiry of the period of its office . The new expressed in the P. & S.D. Office note dated 29-10-46 is correct,.

Sd/-
13/11
D.S.

I agree

R.L.A.

Sd/- P.N.M.
19/11/46

U.R. to P & S.D. No. 8419 dated 25-11-46

Mjr/10/7

4 Cs.